

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRIAN ANDREW TAPIA,
Plaintiff,

v.

B. CURTICE, et al.,
Defendants.

Case No. 1:20-cv-01790-NONE-EPG (PC)

ORDER RE: NOTICE OF DISMISSAL AND
REQUEST FOR COPY OF COMPLAINT

ORDER DIRECTING CLERK TO SEND
PLAINTIFF COPY OF COMPLAINT (ECF No.
1)

ORDER DIRECTING DEFENDANTS TO FILE
RESPONSE TO NOTICE OF DISMISSAL
WITHIN SEVEN DAYS

(ECF No. 37)

On December 1, 2021, Plaintiff filed what the Court construes as a notice of voluntary dismissal and a request for a copy of his complaint. (ECF No. 37).

As to Plaintiff's request for a copy of his complaint, the Court will grant it and direct the Clerk of Court to send Plaintiff a copy of his complaint.

As to Plaintiff's notice of voluntary dismissal, as Defendants have appeared (ECF No. 28), Plaintiff cannot dismiss this case via a notice. Instead, Defendants must stipulate to the dismissal. Fed. R. Civ. P. 41(a)(1)(A)(ii). Accordingly, the Court will give Defendants seven days from the date of service of this order to file a response indicating whether they stipulate to the dismissal. If

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1 they do, the Court will treat the signed filings as a stipulation of dismissal and dismiss this
2 action.¹

3 Accordingly, based on the foregoing, IT IS ORDERED that:

- 4 1. The Clerk of Court is directed to send Plaintiff a copy of his complaint (ECF No. 1);
5 and
6 2. Defendants have seven days from the date of service of this order to file a response to
7 Plaintiff's notice of voluntary dismissal.

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9 IT IS SO ORDERED.

10 Dated: **December 2, 2021**

/s/ Eric P. Gray
11 UNITED STATES MAGISTRATE JUDGE
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26 ¹ The Court notes that the dismissal will be without prejudice, unless Plaintiff has previously dismissed a
27 federal or state court action that is based on, or includes, the same claims at issue in the present case. See Fed. R.
28 Civ. P. 41(a)(1)(B) ("Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the
plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of
dismissal operates as an adjudication on the merits.").